IN THE HIGH COURT OF DELHI AT NEW DELHI

CR.P.No.299/2005

Allahabad Bank ... Petitioner
! through: Mr.Shiv Shankar, Advocate

VERSUS

$ Sh. Randhir Singh & Ors. ... Respondents
^ through: Mr.V.K.Kalra, Advocate for R-1 & 2

% **D**ATE OF DECISION: 11-07-2007

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Respondents are plaintiffs. Petitioner was the defendant.

2. A suit was filed seeking decree of declaration and permanent injunction, inter alia, on the plea that the plaintiffs had purchased the suit property from Rajesh Solanki. Being relevant, it may be noted that the so called

purchase was stated to be by and under the usual documents styled as sale documents in the Union Territory of Delhi i.e. will, power of attorney and agreement to sell.

3. It was further averred that Rajesh Solanki had purchased the property likewise i.e. under similar documents from one Ram Prakash, stated to be the father of Deepak Kumar and Pradeep Kumar.

4. Grievance was to the action taken by Allahabad Bank to possess the property pursuant to it being mortgaged by Deepak Kumar and Pradeep Kumar and their being a default in repayment of the loan.

5. It was stated in the plaint that Deepak Kumar and Pradeep Kumar had taken a loan from the petition and had deposited title deeds pertaining to the property with the bank as security for repayment of loan. This was stated to be an act of fraud.

6. On the plea aforesaid, decree of declaration to the effect that the said mortgage by Deepak Kumar and Pradeep Kumar be declared null and void was prayed for. Permanent injunction was sought to restrain the petitioner from dispossessing the plaintiffs from the mortgaged property.

7. Petitioner filed a reply inter alia alleging that the suit was barred under Section 34 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act,2002 (hereinafter referred to as the Act).

8. Following issue was framed on 2.5.2005 :-

> "Whether the suit of the plaintiff is barred and the court would not have jurisdiction to entertain the suit in view of Section 34 of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act,2002? OPD"

9. Vide impugned order dated 9.5.2005, petitioner has been granted a partial relief, in that, it has been held that the relief of injunction is not available. However, it has been held that the suit for declaration is maintainable.

10. Suffice would it be to note that under Section 13 of the Act, a power has been conferred upon secured creditor to enforce right created under a security without the intervention of courts or Tribunals.

11. Under Section 14 of the Act where possession of secured asset is required to be taken over by the creditor or secured asset is required to be sold or transferred, the secured creditor is obliged to petition the concerned District Magistrate praying for appropriate directions to be issued.

12. Under Section 17 of the Act, any person

aggrieved by any measure referred to in sub-section (4) of Section 13 taken by the secured creditor has a right to approach the Debt Recovery Tribunal. The Tribunal is required to decide whether the measure taken by the secured creditor for enforcement of the security is in accordance with law.

13. Section 34 of the Act reads as under :-

> "34. Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act,1993 (51 of 1993)."

14. Ex facie, there is a complete bar on the jurisdiction of civil courts to entertain suits or proceedings in respect whereof the Debt Recovery Tribunal is empowered to determine issues raised and no injunction can be granted by a civil court.

15. Surprisingly enough, vide impugned order, learned Appellate Judge has held that insofar relief for injunction was prayed for, Section 34 of the Act barred the

same and hence allowed, in part, application filed by the petitioner for rejection of the plaint.

16. It is trite that where jurisdiction of a court is barred, plaint filed before the court is liable to be rejected.

17. Though Section 17 of the Act is worded as if said provision confers an appellate remedy, as explained by the Supreme Court in the decision reported as AIR 2004 SC 2371 *Mardia Chemical Ltd. Vs. UOI*, remedy under Section 17 is an original remedy and has all the trappings of a civil suit. In para 59 and 62 of the report, Hon'ble Supreme Court observed as under :

> "59. We may like to observe that proceedings under Section 17 of the Act, in fact are not appellate proceedings. It seems to be a misnomer. In fact that it is the initial action which is brought before a Forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in Civil Court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court reported in (1974) 2 SCC 393, Smt. Ganga Bai vs. Vijay Kumar & Ors. where in respect of original and appellate proceedings a distinction has been drawn as follows:-

> "..... There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and, therefore, an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute. "
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> 62. As indicated earlier, the position of the appeal under Section 17 of the Act is like that of a suit in the Court of the first instance under the Code of Civil Procedure. No doubt in suits also it is permissible, in given facts and circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the relevant provisions under the law. There is no such provision under the Act."

18. Right to invoke Section 17 is vested in any person who is aggrieved by the measure taken under sub-section (4) of Section 13 of the Act. The expression "*any person*" is wide enough to include the plaintiffs i.e.

respondents herein.

19. Petition accordingly stands disposed of quashing the impugned order dated 9.5.2005 insofar it has been held that suit for declaration is maintainable. It is hereby held that the plaint is liable to be rejected being barred under Section 34 of the Act. It is clarified that remedy of the plaintiffs is to approach the Debt Recovery Tribunal under Section 17 of the Act.

20. No costs.

July 11, 2007 PRADEEP NANDRAJOG, J.
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